

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-275-S**

IN RE:)
Application of Condor Environmental,)
Inc., Requesting an Expansion of its)
Existing Sewer Service Area to Include)
Certain Portions of Anderson County)
and Saluda County and Approval of)
Agreement.)

SCWSA's Response to Condor's Motion to Strike

In response to Condor Environmental, Inc.'s (Condor) Reply and Motion to Strike Saluda County Water and Sewer Authority's (SCWSA) Response to Motion for Reconsideration and Reply to Condor's Objection to Intervention, SCWSA respectfully submits as follows.

On December 13, 2020, Condor filed a Reply to the Office of Regulatory Staff's Response to Motion to Allow Service on a Provisional Basis (**Condor's Reply 1**). On December 22, 2020, Condor filed the Reply and Motion to Strike Saluda County Water and Sewer Authority's Response to Motion for Reconsideration and Reply to Condor's Objection to Intervention (**Condor's Reply 2**). As a part of Condor's Reply 2, Condor is moving to strike SCWSA's reply on the grounds that replies are not allowed. If replies are disallowed retroactively, then both Condor's Reply 1 and Condor's Reply 2 should also be stricken. If replies are disallowed prospectively, then Condor should not file one after this Response to Condor's Motion to Strike.

As persuasive authority, Condor cites to the U.S. District Court Local Civ. Rule 7.07 (D.S.C.) that replies are to be discouraged. This Local Rule does not prohibit replies. The Rule

allows replies to matters raised initially in response to a motion. In Condor's Objection to Petition to Intervene of Saluda County Water and Sewer Authority, Condor unqualifiedly alleged a developer had the right to choose its sewer provider. This was a new matter raised initially by Condor in its Objection. If Local Civ. Rule 7.07 applied, SCWSA would be entitled to controvert the matter raised initially by Condor. SCWSA set forth with greater particularity its bases for claiming its exclusive service territorial rights, which would not have been necessary but for Condor's assertion of the right to choose a provider.

SCWSA's Response to Motion for Reconsideration and Reply to Condor's Objection to Saluda County Water and Sewer Authority's Petition to Intervene does not contain redundant, immaterial, impertinent or scandalous matters. Nor are special purpose district SCWSA's State and federal territorial rights insufficient as a defense to the Application. Condor has chosen to move to strike because it does not want SCWSA's dispositive territorial rights before the Commission. Condor has not cited to the Commission any legal bases for why Condor has a right to be given a service territory within Saluda County in contravention to SCWSA's legal rights.¹ Condor has not cited to the Commission any legal bases for why Palmetto Pointe has a right to choose its provider.² SCWSA's exclusive territorial rights in unincorporated Saluda

¹ SCWSA is a special purpose district, not a municipality or a commission of public works. Thus, *Commissioners of Public Works of the City of Laurens v. City of Fountain Inn*, 428 S.C. 209, 833 S.E.2d 834 (2019), is inapplicable. Further, Condor is a new entrant into Saluda County, not the provider with the closest existing infrastructure.

² With respect to onsite wastewater systems, "a public entity shall own the system and shall be responsible for the operation, maintenance and replacement of all components unless otherwise approved by [DHEC]. [DHEC] may consider a request from a private entity or person; however, such proposals must be evaluated on a case-by-case basis. [DHEC] will evaluate the capability of long-term, reliable system operation in its evaluation of a permit request." S.C. Code Ann. Regs. § 61-56.2. ALH's permit to construct makes no mention of Condor. SCWSA has not seen a request to DHEC for Condor to own the septic system at Palmetto Pointe. The Clean Water Act does not allow for a planning agency, especially over the objection of the management agency, to issue a permit in conflict with the 201/208 plan for the area (Saluda County). 28 U.S.C. § 1288(e). Any letter of consistency in favor of

County are not limited geographically to only where SCWSA has centralized sewer. SCWSA has consistently said it is the provider, particularly where, as here, it is already furnishing water.³ SCWSA has a legitimate, compelling public interest in ensuring its sewer service territory is not diminished into a patchwork of onsite community septic systems that SCWSA will ultimately have to take over, while SCWSA is expending tens of millions of dollars to build a sewer plant to serve its footprint.

WHEREFORE, for the foregoing reasons, Condor's motion to strike should be denied.

Charlotte, NC

DRISCOLL SHEEDY, P.A.

Date: 12/28/2020

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ATTORNEYS FOR SCWSA

Condor would have to be predicated upon the inability of SCWSA to provide long-term, reliable onsite system operation, which is not the case. And, even if the onsite system is owned by a private entity, that entity must furnish financial assurance. S.C. Code Ann. Regs. § 61-56.2. The word is "shall", not "may".

³ SCWSA has not consented to Condor being the provider. SCWSA has never represented it was alright with Condor as the provider. There is no estoppel against SCWSA as a local government. *South Carolina Dept. of Transp. v. Horry County*, 391 S.C. 76, 83, 705 S.E.2d 21, 25 (2011), citing *Grant v. City of Folly Beach*, 346 S.C. 74, 80-81, 551 S.E.2d 229, 232 (2001).